

ADA E. LUNDGREN
NORMAN L. LUNDGREN

IBLA 74-284

Decided September 12, 1974

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, denying a petition to reinstate terminated oil and gas lease NM 1402-A.

Reversed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated because the rental was not received until eight days after the due date, may be reinstated upon proper application where the delay in paying is attributed to a sudden illness which prevented the lessee from the normal conduct of her business.

APPEARANCES: Ada E. Lundgren, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ada E. Lundgren et vir, Norman L. Lundgren, appeal from the denial of their petition to reinstate oil and gas lease NM 1402-A after the lease terminated automatically by operation of law because the annual rental was not paid timely.

The rental (\$ 40.00) was due on February 1, 1974, and was not received at the New Mexico State Office until February 8. The envelope in which the payment was mailed was postmarked February 6.

Mrs. Lundgren says that she was the one responsible for sending in the payment, and that although she had not received the usual courtesy billing notice for several years, she was aware of the need for timely payment and had previously made payments prior to the due date. 1/

1/ Appellants' failure to receive billing notices was due to the repeated error of the State Office, which persisted year after year

On this occasion, Mrs. Lundgren asserts that she was incapacitated by a sudden illness "about the first part of January." She states that she was very ill, adding:

I am 70 years old and it wasn't until Feb. 4 that I recovered enough to take an interest in anything. On that day we happened to talk about that oil lease and then we realized that neither one of us had paid it so we sent it in at once. My husband is 69.

Appellants' failure to mail the payment sufficiently in advance so that it would reach the New Mexico State Office may indicate a failure on their part to exercise due diligence.

[1] However, a failure to exercise "reasonable diligence" in payment of rental is "justifiable" when caused by a factor which is ordinarily outside of the control of the lessee and which occurs in close proximity to the anniversary date of the lease, such as an earthquake, flood or other natural disaster, or the death or illness of the lessee or of a member of his immediate family. Sufficiently extenuating circumstances must be present so as to affect the lessee's actions. C. Wesley Ault, 16 IBLA 291 (1974); Louis Samuel, 8 IBLA 268, 274 (1972); see John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972).

Mrs. Lundgren's illness was a factor outside of her control. It occurred in close proximity to the anniversary date of the lease, and we are persuaded that it was sufficiently debilitating so as to constitute an extenuating circumstance, particularly in view of her age. We conclude, therefore, that the tardiness of the payment was "justifiable" within the context of the statute, 30 U.S.C. § 188(c) (1970), which provides for reinstatement where "* * * it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence * * *." (Emphasis added).

(fn. 1 cont.)

in sending the notices to a non-existent address in Duluth, Minnesota despite the fact that the lessees' address of record was Melrude, Minnesota, despite the fact that appellants wrote in 1971, 1972 and 1973 complaining that they were not receiving their notices and giving their address as Melrude, Minnesota, and despite the fact that since 1971 the Post Office had returned four pieces of mail to the State Office with the notation that there was no such street address in Duluth, all of which were simply placed in the case file without any corrective action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. The record will be returned to the New Mexico State Office for reinstatement of the lease if all else be found regular.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

